2	VICTOR PIPPINS California Bar No. 251953 FEDERAL DEFENDERS OF SAN DIEGO, 225 Broadway, Suite 900 San Diego, California 92101-5008 Telephone: (619) 234-8467 Victor_Pippins@fd.org	INC.			
5 6	Attorneys for Mr. Marco Antonio Roman-Serrano				
7					
8	UNITED STATES DISTRICT COURT				
9	SOUTHERN DISTRICT OF CALIFORNIA				
10	(HONORABLI	E THOMAS J. WHELAN)			
11	UNITED STATES OF AMERICA,	) CASE NO.: 08CR1908-W			
12	Plaintiff,	) DATE: July 7, 2008 ) TIME: 2:00 p.m.			
<ul><li>13</li><li>14</li><li>15</li></ul>	v.  MARCO ANTONIO ROMAN-SERRANO,  Defendant.	) NOTICE OF MOTIONS AND MOTIONS TO: 1) COMPEL DISCOVERY; AND 2) GRANT LEAVE TO FILE FURTHER MOTIONS			
16		) _)			
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18 19	TO: KAREN P. HEWITT, UNITED STATES ATTORNEY; AND ALESSANDRA SERANO, ASSISTANT UNITED STATES ATTORNEY:				
20	PLEASE TAKE NOTICE that on Ju	aly 7, 2008, or as soon thereafter as counsel may be heard,			
21	Marco Antonio Roman-Serrano, by and through his counsel, Victor N. Pippins and Federal Defenders of San				
22	Diego, Inc., will ask this Court to enter and order granting Mr. Roman-Serrano's motions in the above listed				
23	case.				
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1	<u>MOTION</u>			
2	Marco Antonio Roman-Serrano, by and through his attorneys, Victor N. Pippins, and Federal			
3	Defenders of San Diego, Inc., hereby moves this Court to grant the following motions:			
4	4 1) Compel Discovery; and	1) Compel Discovery; and		
5	5 2) Grant Leave to File Further Motions.			
6	These motions are based upon the instant motion and notice of motion, the attached statements of			
7	7 facts and memorandum of points and authorities, and any a	facts and memorandum of points and authorities, and any and all other materials that may come to this Court's		
8	8 attention at the time of the hearing on this motion.			
9	9 Respectful	ly submitted,		
10	10			
11	Dated: June 23, 2008  /s/ Victor VICTOR	· <u>N. Pippins</u> <b>N. PIPPINS</b>		
12	12 Federal De	fenders of San Diego, Inc. for Mr. Roman-Serrano		
13	13	for Mr. Roman Schano		
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1	CERTIFICATE OF SERVICE		
2	Counsel for Defendant certifies that the foregoing pleading is true and accurate to the best of his		
3	information and belief, and that a copy of the foregoing document has been served this day upon:		
4	Alesandra Serano		
5	Alesandra.Serano@usdoj.gov,		
6	Respectfully submitted,		
7	/s/ Victor Pippins		
8	DATED: June 23, 2008 VICTOR N. PIPPINS		
9	Federal Defenders of San Diego, Inc. Attorneys for Mr. Roman-Serrano		
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1 2 3 4	VICTOR PIPPINS California Bar No. 251953 FEDERAL DEFENDERS OF SAN DIEGO 225 Broadway, Suite 900 San Diego, California 92101-5008 Telephone: (619) 234-8467 Victor_Pippins@fd.org	, INC.					
5							
6	Attorneys for Mr. Marco Antonio Roman-Serrano						
7							
8	UNITED ST.	UNITED STATES DISTRICT COURT					
9	SOUTHERN D	ISTRIC	T OF CALIFORNIA				
10	(HONORABL	E THO	OMAS J. WHELAN)				
11	UNITED STATES OF AMERICA,	)	CASE NO.: 08CR1908-W				
12	Plaintiff,	)	DATE: July 7, 2008				
13	v.	)	TIME: 2:00 p.m.				
14	MARCO ANTONIO ROMAN-SERRANO,	)	STATEMENT OF FACTS AND				
15	Defendant.	)	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION				
16		_)					
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18	I.						
19	STATI	<u>EMENT</u>	T OF FACTS				
20	According to information provided by the government, which Mr. Roman-Serrano does not adopt						
21	or accept, Mr. Roman-Serrano made application for entry into the United States from Mexico through the						
22	pedestrian entrance at the San Ysidro, California Port of Entry at approximately 11:00 a.m. on April 6, 2008.						
23	Customs and Border Protection Agent Juan Lujan escorted Mr. Roman-Serrano to the Port Enforcement Team						
24	for further processing. Subsequent investigation led to Mr. Roman-Serrano being arrested for violation of						
25	Title 8, United States Code section 1326, Attempted Entry After Deportation.						
26	On June 11, 2008 an indictment was handed down by the Grand Jury of the Southern District of						
27	California, charging Mr. Roman-Serrano with a violation of Title 8, United States Code section 1326 (a) and						
28	(b). A not guilty plea was entered on Mr. Ron	(b). A not guilty plea was entered on Mr. Roman-Serrano's behalf.					

II.

## MOTION TO COMPEL DISCOVERY

Mr. Roman-Serrano moves for the production of the following discovery. This request is not limited to those items that the prosecutor knows of, but rather includes all discovery listed below that is in the custody, control, care, or knowledge of any "closely related investigative [or other] agencies." See United States v. Bryan, 868 F.2d 1032 (9th Cir. 1989).

To date, *defense counsel has received 95 pages of discovery*. Mr. Roman-Serrano respectfully requests that the Government be ordered to produce discovery because Mr. Roman-Serrano has reason to believe that he has not received all the discoverable material in his case. Ms. Moreno-Mendoza **specifically requests production of a copy of the taped proceedings and any and all documents memorializing the deportation proceeding allegedly held and any other proceedings that the Government intends to rely <b>upon at trial**. This request includes discovery of materials known to the Government attorney, as well as discovery of materials which the Government attorney may become aware of through the exercise of due diligence. <u>See</u> FED. R. CRIM. P. 16.

Mr. Roman-Serrano has also not received a full copy of his A-file. Mr. Roman-Serrano specifically requests the documents memorializing the alleged deportation proceedings and any other proceedings that the Government intends to rely upon at trial.

Mr. Roman-Serrano additionally requests that the Court order the Government to allow him the opportunity to review his A-file in its entirety. First, the A-file contains documentation concerning his alleged deportation. Part of Mr. Roman-Serrano defense may be that his underlying deportation was invalid. The documents in the A-file would help illuminate the validity or futility of such a defense. For example, A-file documents typically contain biographical information. Such information is essential to determining whether Mr. Roman-Serrano deportation was invalid.

Second, the Government will likely try to show at trial that a Government officer searched the A-file and did not find an application by Mr. Roman-Serrano for permission to enter the United States. Mr. Roman-Serrano anticipates that the Government will attempt to admit a "Certificate of Non-Existence of Record" against him, arguing that if Mr. Roman-Serrano had ever applied for permission to enter the United States,

1 such an application would be found in the A-file and because such an application is not in the A-file, Mr. Roman-Serrano must not have applied for permission to enter the United States.

Although the certificate might be admissible, the question of the thoroughness of the search conducted by the Government of the A-file is, and should be, open to cross-examination. United States v. Sager, 227 F.3d 1138, 1145 (2000) (error not to allow jury to "grade the investigation."). Mr. Roman-Serrano should be able to review his A-file in order to see whether any application for lawful admission exists. Moreover, Mr. Roman-Serrano should also be able to verify whether other documents that would ordinarily be in the A-file are "non-existent," or otherwise missing from her A-file. Mr. Roman-Serrano may assert a defense that his application for lawful entry was lost or otherwise misplaced by the Government. He must be allowed the opportunity to review his A-file and the manner in which it is being maintained by the Government in order to present this defense.

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## MOTION FOR LEAVE TO FILE ADDITIONAL MOTIONS

III.

Mr. Roman-Serrano has received 95 pages of discovery. He has not however received any audiotapes of his deportation proceeding as well as a photocopy of the A-file. As information comes to light, due to the government providing additional discovery in response to these motions or an order of this Court, Mr. Roman-Serrano may find it necessary to file further motions. It is, therefore, requested that Mr. Roman-Serrano be allowed the opportunity to file further motions based upon information gained through the discovery process. Specifically, because Mr. Roman-Serrano's collateral attack on the underlying deportations relies on the audiotapes of the deportation proceedings, he requests the opportunity to file further briefing to support his collateral attack once he has been provided an opportunity to listen to the proceedings.

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1	I	<b>V.</b>	
2	CONCLUSION		
3	For the foregoing reasons, Mr. Roman-Serrano respectfully requests that the Court grant the above		
4	motions.		
5		Respectfully submitted,	
6		/ / W' D' - '	
7	Dated: June 23, 2008	VICTOR PIPPINS  Figure 1 Defendence of Con Disease Inc.	
8		/s/ Victor Pippins VICTOR PIPPINS Federal Defenders of San Diego, Inc. Attorneys for Marco Antonio Roman-Serrano Victor_Pippins@fd.org	
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